



**DEPARTMENT OF TRANSPORTATION**

**[4910-22-P]**

**Federal Highway Administration**

**Buy America Waiver Notification**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 34 State projects involving the acquisition of vehicles and equipment on the condition that they be assembled in the U.S.

**DATES:** The effective date of the waiver is **[INSERT DATE ONE DAY AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, telephone 202-366-1562, or via e-mail at [gerald.yakowenko@dot.gov](mailto:gerald.yakowenko@dot.gov). For legal questions, please contact Ms. Jennifer Mayo, FHWA Office of the Chief Counsel, 202-366-1523, or via e-mail at [jennifer.mayo@dot.gov](mailto:jennifer.mayo@dot.gov). Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION: Electronic Access**

An electronic copy of this document may be downloaded from the Federal Register's Web site at <http://www.archives.gov> and the Government Printing Office's database at <http://www.access.gpo.gov/nara>.

## **Background**

This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for the obligation of Federal-aid funds for 34 State projects involving the acquisition of vehicles (including sedans, vans, pickups, trucks, buses, and street sweepers) and equipment (such as trail grooming equipment) on the condition that they be assembled in the U.S. The waiver would apply to approximately 2,528 vehicles and equipment acquisitions. The requests for the fourth quarter of calendar year 2015, available at <http://www.fhwa.dot.gov/construction/contracts/cmaq160317.cfm>, are incorporated by reference into this notice. These projects are being undertaken to implement air quality improvement, safety, and mobility goals under FHWA's Congestion Mitigation and Air Quality Improvement Program and the Recreational Trails Program.

Title 23, section 635.410, Code of Federal Regulations (23 CFR 635.410) requires that steel or iron materials (including protective coatings) that will be permanently incorporated in a Federal-aid project must be manufactured in the U.S. For FHWA, this means that all the processes that modified the chemical content, physical shape or size, or final finish of the material (from initial melting and mixing, continuing through the bending and coating) occurred in the U.S. The statute and regulations create a process for granting waivers from the Buy America requirements when its application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available.

In 1983, FHWA determined that it was both in the public interest and consistent with the legislative intent to waive Buy America for manufactured products other than

steel manufactured products. However, FHWA's national waiver for manufactured products does not apply to the requests in this notice because they involve predominately steel and iron manufactured products. The FHWA's Buy America requirements do not have special provisions for applying Buy America to "rolling stock" such as vehicles or vehicle components (see 49 U.S.C. 5323(j)(2)(C), 49 CFR 661.11, and 49 U.S.C. 24405(a)(2)(C) for examples of Buy America rolling stock provisions for other DOT agencies).

Based on all the information available to the agency, FHWA concludes that there are no domestic manufacturers that produce the vehicles and vehicle components identified in this notice in such a way that their steel and iron elements are manufactured domestically. The FHWA's Buy America requirements were tailored to the types of products that are typically used in highway construction, which generally meet the requirement that steel and iron materials be manufactured domestically. In today's global industry, vehicles are assembled with iron and steel components that are manufactured all over the world. The FHWA is not aware of any domestically produced vehicle on the market that meets FHWA's Buy America requirement to have all its iron and steel be manufactured exclusively in the U.S. For example, the Chevrolet Volt, which was identified by many commenters in a November 21, 2011, Federal Register Notice (76 FR 72027) as a car that is made in the U.S., is comprised of only 45 percent of U.S. and Canadian content according to the National Highway Traffic Safety Administration's part 583 American Automobile Labeling Act Report Web page ([http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+\(AALA\)+Reports](http://www.nhtsa.gov/Laws+&+Regulations/Part+583+American+Automobile+Labeling+Act+(AALA)+Reports)). Moreover, there is no indication of how much of this 45

percent content is U.S. manufactured (from initial melting and mixing) iron and steel content.

In accordance with Division K, section 122 of the Consolidated and Further Continuing Appropriations Act of 2015 (PL 113-235), FHWA published a notice of intent to issue a waiver on its Web site at <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=119> on March 17<sup>th</sup>. The FHWA received 11 comments in response to the publication. Three commenters support granting the waiver and stated that “the vehicles represent an ideal way for domestic clean fuel to be used and help air quality, economic security, and the regions.” Five commenters opposed granting the waiver and three commenters provided general comments suggesting that: (1) Buy America is supposed to bring manufacturing jobs back home; (2) the list is very expansive and appeared to be a list of products that are based on preference but could not be purchased domestically; and (3) some of the Recreational Trail items are specialized items available off the shelf. These commenters did not provide a recommendation for domestic products that fully comply with FHWA’s Buy America requirements.

Based on FHWA’s conclusion that there are no domestic manufacturers that can produce the vehicles and equipment identified in this notice in such a way that steel and iron materials are manufactured domestically, and after consideration of the comments received, FHWA finds that application of FHWA’s Buy America requirements to these products is inconsistent with the public interest (23 U.S.C. 313(b)(1) and 23 CFR 635.410(c)(2)(i)).

However, FHWA believes that it is in the public interest and consistent with the

Buy America requirements to impose the condition that the vehicles and the vehicle components be assembled in the U.S. Requiring final assembly to be performed in the U.S. is consistent with past guidance to FHWA Division Offices on manufactured products (see Memorandum on Buy America Policy Response, December 22, 1997, <http://www.fhwa.dot.gov/programadmin/contracts/122297.cfm>). A waiver of the Buy America requirement without any regard to where the vehicle is assembled would diminish the purpose of the Buy America requirement. Moreover, in today's economic environment, the Buy America requirement is especially significant in that it will ensure that Federal Highway Trust Fund dollars are used to support and create jobs in the U.S. This approach is similar to the conditional waivers previously given for various vehicle projects. Thus, so long as the final assembly of the 34 State projects occurs in the U.S., applicants to this waiver request may proceed to purchase these vehicles and equipment consistent with the Buy America requirement.

In accordance with the provisions of section 117 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Technical Corrections Act of 2008 (PL 110-244), FHWA is providing this notice of its finding that a public interest waiver of Buy America requirements is appropriate on the condition that the vehicles and equipment identified in the notice be assembled in the U.S. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to FHWA's Web site via the link provided to the waiver page noted above.

(Authority: 23 U.S.C. 313; PL 110-161; 23 CFR 635.410)

Issued on: May 9, 2016.

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Gregory G. Nadeau,  
Administrator,  
Federal Highway Administration.

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